
IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

ALASKA PACIFIC RAILWAY & TERMINAL
COMPANY, a corporation,

Plaintiff and Appellant,

vs.

THE COPPER RIVER & NORTHWESTERN
RAILWAY COMPANY, a corporation;
KATALLA COMPANY, a corporation, and
M. K. ROGERS, *Defendants and Appellees.*

No. 149

Appeal from the District Court for the District of
Alaska, Division No. 1.

SUPPLEMENT TO REPLY BRIEF

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Appellant asks leave to submit this supplement to the
reply brief.

On page 20 of appellant's brief, and in the first sub-
division of appellant's argument, the 28th Assignment of

Error in the Record (p. 349) is relied on as therein stated in support of the first proposition in the argument. Through an oversight in correcting the original copy and proof of this brief, we find that this assignment of error is not properly copied into the specifications of error on page 18. The assignment of error relied on reads as follows:

“That the court erred in refusing to grant said injunction pendente lite and the plaintiff’s application therefor, and, in connection therewith, in permitting the defendants to defend against said application and in holding that the defendants could defend against said application, while it appeared affirmatively in evidence that the charter and articles of incorporation of the Copper River and Northwestern Railway Company permitted and provided only for the building of a road from a point at or near Valdez, in the district of Alaska, and while it appeared affirmatively to the court from the uncontradicted evidence in the cause that the said The Copper River and Northwestern Railway Company had abandoned its terminus at Valdez and was attempting to construct its line of railroad from Katalla, a point far distant from Valdez, without having altered its articles of incorporation changing its Pacific Ocean terminus as required by law.”

The appellee’s brief argues the proposition presented by the 28th Assignment of Error, so that the appellee has in no way been misled by this omission. We call this to the Court’s attention simply that there may be no misunderstanding. It is evident that appellee understood the argument to which the assignment referred, for the proposition presented by our brief in the argument is fully discussed by the appellee in answering the same.

On page 13 of appellant’s reply brief the recent case in the land office of *Northern Pacific Ry. Co. vs. Montana Railroad Co.* was cited to this court, and upon the oral ar-

gument of this case it was stated that we would supply the citation to the Land Office Reports, in which this case was reported. We have been unable to ascertain whether this report has yet been published by the Land Department. The case, however, is cited in the recent decision of the Commissioner of the General Land Office overruling the protests of The Copper River & Northwestern Railway Company and the Alaska Petroleum & Coal Company against the approval of Terminal Tract No. 1B. We have written counsel for the plaintiff at Washington, D. C., requesting the citation to the case above referred to, and also requesting that he transmit forthwith to the clerk of this court, at San Francisco, a certified copy of the recent decision above mentioned in the contest over Terminal Tract No. 1B, in which the same principle is announced, and we hereby ask leave to file this certified copy in accordance with the precedent established in the case of *Tarpey vs. Madsen*, 178 U. S. 215.

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Attorneys for Appellant.